

Mr. Jason J. Smith
Reg. No. 10581-068
USP Lewisburg
Satellite Camp
Lewisburg, PA. 17837

October 8, 2005

The Honorable Sean J. McLaughlin
Federal Courthouse
Room A250
17 South Park Row
Erie, Pennsylvania 16501-1158

Re: U.S. v. Jason J. Smith
Criminal No. 95-02
Appellate No. 05-2391

Dear Judge McLaughlin:

Hello, and how are you? As you are aware, this Court recently granted the Government's Motion to Lift Stay of Order on October 3, 2005. This motion was generated by the Office of the United States Attorney in Erie, Marshall J. Piccinini, Esq. Although there is no doubt that the motion, and its supporting assertions, were made in good faith by that office, it should be noted that the motion was based on material factual and legal inaccuracies. Furthermore, all respective counsel of record to the proceedings were given formal notice of my intention to seek a writ of certiorari to the United States Supreme Court in this matter, as well as my Motion for Extension of Stay pending disposition of those proceedings, which was timely filed. (received by this Court - according to time stamp - on October 5, 2005).

To begin your Honor, once in the court of appeals, Mr. Piccinini and the Erie Office of the U.S. Attorney was formally removed as counsel of record in this case by the notice of entry of appearance duly filed with the Clerk of the Third Circuit Court of Appeals by the distinguished Mr. Michael L. Ivory, Esq., from the Pittsburgh Office of the United States Attorney for the Western District of Pennsylvania. (Please see Attachment A). Page two (2) of that document, below Mr. Ivory's signature, states that "only that attorney will be notified of the Court's action in this case. Other attorneys who desire notification should make appropriate arrangements with counsel of record." If I was supposed to continue to serve Mr. Piccinini at the Erie Office of the U.S. Attorney as a party to the proceedings after that point, then I apologize for not having done so. Though I do believe that serving only Mr. Ivory from that point forward was appropriate and consistent with any legal

requirements and obligations.

Apparently, as counsel not of record, and with no arrangements with Mr. Ivory to be kept abreast of **all** proceedings on the appellate level, the Erie Office of the U.S. Attorney was unaware that I had **timely** filed a Petition for Rehearing with Suggestion for Rehearing En Banc in this case on, approximately, August 25, 2005. Hence the Government's mistaken assertion in its (undated) Motion to Lift the Stay, at number (4) which states "[i]t does not appear that the defendant has appealed the Third Circuit Court of Appeals' decision, and the time for doing so has passed." See Attachment B which is page 2 of the Government's Motion to Lift the Stay. (Served upon me after being sent to my previous address at FCI Fort Dix, notwithstanding my notice of change of address sent to counsel of record, Mr. Ivory, and the Clerk of the Third Circuit. See Attachment C).

Rule 13(1) of the Supreme Court Rules provides in relevant part:

Unless otherwise provided by law, a petition for a writ of certiorari to review a judgment in any case, civil or criminal, entered by ... a United States court of appeals ... is timely when it is filed with the Clerk of this Court within 90 days after entry of the judgment.

Rule 13(3) further provides in relevant part:

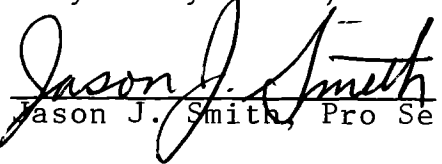
But if a petition for rehearing is timely filed in the lower court by any party, the time to file the petition for a writ of certiorari for all parties ... **runs from date of the denial of the petition for rehearing**

(emphasis added). In this case, my petition for rehearing with suggestion for rehearing En Banc was timely filed on August 25, 2005, and subsequently denied on September 13, 2005. Accordingly, the time for filing a petition for a writ of certiorari to the Supreme Court extends to, and including, December 12, 2005 (excluding any motions for extension of time, if filed and granted).

In any event, I respectfully request that this Honorable Court not penalize me for this confusion, and that it reinstate its May 18, 2005 Stay of its April 8, 2005 Order and Judgment, and grant the defendant's motion to extend that Stay through the final disposition of the proceedings by the Supreme Court.

Thank you for your time and patience in these matters.

Very Truly Yours,


Jason J. Smith, Pro Se



U.S. Department of Justice

United States Attorney
Western District of Pennsylvania

U.S. Post Office & Courthouse
700 Grant Street
Suite 400
Pittsburgh, Pennsylvania 15219

412/644-3500

May 11, 2005

Marcia M. Waldron, Clerk
United States Court of Appeals
for the Third Circuit
21400 United States Courthouse
601 Market Street
Philadelphia, PA 19106-1790

RE: **United States v. Smith**
No.05-2391

Dear Ms. Waldron,

Enclosed for filing on behalf of appellees, is an entry of appearance form in the above referenced appeal.

Yours truly,

Mary Beth Buchanan
United States Attorney

A handwritten signature in cursive script, appearing to read "Michael Leo Ivory".

Michael Leo Ivory
Assistant United States Attorney

cc: Jason J. Smith, #10581-068

Attachment A

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 05-2391 (lwc)

United States of America v. Jason J. Smith

The Clerk will enter my appearance as Counsel of Record for (please list names of all parties represented, using additional sheet(s) if needed):

United States of America

who IN THIS COURT is (please check only one):

 Petitioner(s) Appellant(s) Intervenor(s)
 Respondent(s) X Appellee(s) Amicus Curiae

(Type or Print) Name Michael Leo Ivory
Mr. Ms. Mrs. Miss

Firm United States Attorney's Office

Address 700 Grant Street, Suite 400

City & State Pittsburgh, PA

Zip Code 15219

Phone (412) 894-7375

Fax (412) 644-4549

PLEASE TYPE E-Mail Address Michael.Ivory@usdoj.gov

SIGNATURE OF COUNSEL:

Michael Leo Ivory

ONLY COUNSEL OF RECORD SHALL ENTER AN APPEARANCE AND ONLY THAT ATTORNEY WILL BE THE ONE NOTIFIED OF THE COURT'S ACTION IN THIS CASE. OTHER ATTORNEYS WHO DESIRE NOTIFICATION SHOULD MAKE APPROPRIATE ARRANGEMENTS WITH COUNSEL OF RECORD.

ONLY ATTORNEYS WHO ARE MEMBERS OF THE BAR OF THE COURT OF APPEALS FOR THE THIRD CIRCUIT OR WHO HAVE SUBMITTED A PROPERLY COMPLETED APPLICATION FOR ADMISSION TO THIS COURT'S BAR MAY FILE AN APPEARANCE FORM. (BAR ADMISSION IS WAIVED FOR FEDERAL ATTORNEYS.)

IT IS IMPORTANT THAT ALL REQUESTED INFORMATION BE PROVIDED AND THAT COUNSEL SIGN THE FORM IN THE APPROPRIATE AREA.

REV. 08/15/01

pg. 2 ATT. A

4. It does not appear that the defendant has appealed the Third Circuit Court of Appeals' decision, and the time for doing so has passed.

5. Accordingly, the government requests this Court to lift the stay of its April 8, 2005 Order.

WHEREFORE, the government respectfully requests this Court to enter an order lifting the stay of its April 8, 2005 Order.

Respectfully submitted,

MARY BETH BUCHANAN
United States Attorney

/S/ Marshall J. Piccinini
MARSHALL J. PICCININI
Assistant U.S. Attorney
PA ID No. 56362

Attachment B

Jason J. Smith/Reg. No. 10581-068
USP Lewisburg
Sat. Camp
P.O. Box 2000
Lewisburg, PA. 17837

September 13, 2005

Clerk of the Court
UNITED STATES COURT OF APPEALS
21400 U.S. COURTHOUSE
601 MARKET STREET
PHILADELPHIA, PA. 19106

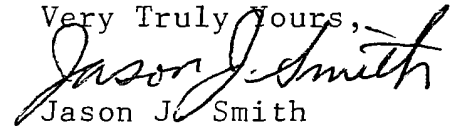
RE: U.S.C.A. No. 05-2391

Dear Sir/Madam:

Please be advised that I have been transferred to another correctional institution within the Federal Bureau of Prisons at the satellite camp, Lewisburg Penitentiary. Any further correspondence may be to the address as specified in the above letter head.

At your convenience, confirmation that you have received my Petition for Rehearing and Suggestion for Rehearing En Banc would be truly appreciated. Thankyou for your patience and assistance on so many matters.

Very Truly Yours,


Jason J. Smith

cc.: Michael L. Ivory, Esq.
Office of United States Attorney
700 Grant Street
Suite 400
Pittsburgh, PA. 15219

ATTACHMENT C

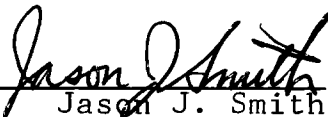
CERTIFICATE OF SERVICE

I, Jason J. Smith, certify under penalty of perjury pursuant to 28 USC § 1746, that on this day, October 8, 2005, a true and correct copy of the foregoing was placed for delivery in the legal mail box at FPC Lewisburg, via first class mail, postage prepaid, to:

Marshall J. Piccinini, Esq.
Office of United States Attorney
Western District of Pennsylvania
Federal Courthouse
Room A330
17 South Park Row
Erie, Pennsylvania 16501-1158

Michael L. Ivory, Esq.
Office of United States Attorney
Western District of Pennsylvania
700 Grant Street
Suite 400
Pittsburgh, Pennsylvania 15219

Dated: October 8, 2005


Jason J. Smith

Mr. Jason J. Smith
Reg. No. 10581-068
USP Lewisburg
Satellite Camp
Lewisburg, PA. 17837

October 8, 2005

Mr. Robert V. Barth Jr., Clerk
United States District Court
Wester District of Pennsylvania
17 South Park Row
Room B-160
Erie, PA. 16501

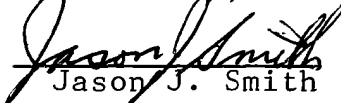
Dear Mr. Barth:

Please find enclosed a letter to the Honorable Sean J. McLaughlin for filing and to be forwarded for his consideration. A copy of of the document has been duly served on the Erie Office of the United States Attorney, Mr. Marshall J. Piccinini, Esq., and the Pittsburgh Office of the United States Attorney, Michael L. Ivory, Esq., respectively.

I have also enclosed an extra copy and a SASE so that, at your convenience, you may return a stamped copy of the letter to me for my records.

Thanking you in advance for your assistance.

Sincerely,


Jason J. Smith